

lowa Department of Public Health Promoting and Protecting the Health of Iowans

Gerd W. Clabaugh, MPA Interim Director

Terry E. Branstad Governor Kim Reynolds Lt. Governor

Confidentiality of Substance Use Disorder Information for Adolescents Quick Guide

Definitions:

"Substance disorder" and "substance-related disorder" means a substance use disorder that results in a functional impairment of sufficient impact and duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual of mental disorders published by the American Psychiatric Association. "Screening" means a brief initial assessment to determine whether a client/patient's risk factors for substance use disorders and/or problem gambling indicate a need for immediate admission and, if so, the specific level of care indicated, or a need for immediate referral to other services.

"Assessment" means the ongoing process of evaluating client/patient strengths, problems, and needs related to substance use disorders, problem gambling, mental health problems and physical health conditions, determining the level of care needed by the client/patient, determining client/patient eligibility for program services, and identifying treatment plan priorities, in accordance with the ASAM Criteria.

Key Points:

- For the most part, primary care or pediatric practices administering a substance use screening tool
 will be subject to Health Insurance Portability and Accountability Act (HIPPA) regulations with
 respect to confidentiality protections. However, if the practice specializes in substance use disorders
 or is a substance abuse treatment program, it will also be subject to 42CFR Part 2, the federal law
 regarding confidentiality of alcohol and drug abuse patient records.
- Generally, screening to identify individuals who may require further assessment or evaluation to determine if they may have an alcohol or drug problem does not constitute a "diagnosis". However an assessment conducted by personnel whose primary function is to screen for alcohol or drug abuse, is covered under 42 CFR Part 2. If you are unsure whether your practice is covered by this regulation, you should consult a lawyer.
- In Iowa, under Iowa Statute 125.32, the registration and other records of facilities shall remain confidential and are privileged to the patient.
- Patient's records may be disclosed to medical personnel in a medical emergency with or without the patient's consent.
- According to Administrative Rule 155(a), the governing body shall establish policies that specify the
 conditions under which information on applicants or client/patients may be released and the
 procedure to be followed for releasing such information. Even if a program is not federally funded,
 all such policies and procedure regarding substance related disorder client/patients shall be in
 accordance with HIPAA and the federal confidentiality regulations, "Confidentiality of Alcohol and
 Drug Abuse Patient Records, 42 CFR Part 2."
- In lowa, age of majority is 18 for all purposes, unless otherwise specifically provided by law. A minor
 is defined as anyone under 18. A minor must consent to hospital and medical care related to the
 diagnosis or treatment of substance related disorders. The consent of parent or guardian is not
 required to authorize care related to such disorders.
- Generally, a minor (under 18), does not need parental or guardian consent for treatment and the minor must provide written consent to release information to any party, including parent or guardian and or third party payment.

- Under 42 CFR Part 2 (1), the release of information by providers requires consent of the minor, as defined by State law. Also under 42 CFR Part 2, a parent cannot get a copy of his or her child's records from a provider if the child does not consent and the provider is prohibited from even acknowledging the child is a client/patient without the child's written consent.
- Providers are prohibited in denying services if a client/patient refuses to sign a release, with one
 exception. The provider may refuse to treat if the client/patient refuses to sign a release to the
 payer.

Summary:

1. When would the release be required?

- a. "Program" includes any person or organization that, in whole, or in part, provides alcohol or drug abuse diagnosis, treatment, referral for treatment or prevention. 42 U.S.C. § 290dd-2, 42 C.F.R. § 2.11
- b. Since the information gathered for an initial screening does not constitute a diagnosis and is not gathered for the purpose of treatment or referral to treatment, it is not covered by 42 C.F.R or HIPAA. Just a caution, if you make a referral for treatment or assessment then the regulations do apply.
- c. Also keep in mind that "diagnosis" is broadly defined under the regulations and not confined to just services provided by a medical professional, a counselor's assessment or evaluation is included as a "diagnosis" for purposes of the regulations.

2. What about parents/guardians?

- a. Both HIPAA and 42 C.F.R. Part 2 leave the issue of who is a minor and whether a minor can obtain health care or in this case, alcohol or drug abuse treatment without parental consent, entirely to state law.
- b. Under 42 C.F.R. Part 2, 1) the program must always obtain the minor's consent for disclosures and cannot rely on the parent's signature; and 2) parental consent for disclosure to a third party is required in addition to the minor's, only if the program is required by state law to obtain parental permission before providing treatment to the minor. [42 C.F.R 2.14] In other words, if parental consent was not required to treat the minor, then parental consent is not required to make disclosures. [42 C.F.R 2.14(b)] If parental consent for treatment is required, the consent of both the minor patient and the parent or guardian is required to make disclosures [42 C.F.R. 2.14(c)]. Regardless, the minor's written consent is required in all cases. Moreover, 42 C.F.R. requires the minor's written consent even when the disclosure is to be made to the minor's parents or guardian.